

112TH CONGRESS
1ST SESSION

S. 1446

To free States to spend gas taxes on their transportation priorities.

IN THE SENATE OF THE UNITED STATES

JULY 28, 2011

Mr. COBURN (for himself, Mr. MCCAIN, Mr. LEE, Mr. DEMINT, Mr. PAUL, Mr. VITTER, Mr. KYL, Mr. CORNYN, Mr. HATCH, Mr. COATS, Mr. CHAMBLISS, Mr. BURR, Mr. ISAKSON, and Mr. PORTMAN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To free States to spend gas taxes on their transportation priorities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “State Transportation
5 Flexibility Act”.

6 **SEC. 2. DIRECT FEDERAL-AID HIGHWAY PROGRAM.**

7 (a) IN GENERAL.—Chapter 1 of title 23, United
8 States Code, is amended by inserting after section 149 the
9 following:

1 **“§ 150. Direct Federal-aid highway program**

2 “(a) ELECTION BY STATE NOT TO PARTICIPATE.—

3 Notwithstanding any other provision of law, a State may
4 elect not to participate in any Federal program relating
5 to highways, including a Federal highway program under
6 the SAFETEA-LU (Public Law 109–59; 119 Stat.
7 1144), this title, or title 49.

8 “(b) DIRECT FEDERAL-AID HIGHWAY PROGRAM.—

9 “(1) IN GENERAL.—Beginning in fiscal year
10 2011, the Secretary shall carry out a direct Federal-
11 aid highway program in accordance with the require-
12 ments of this section under which the legislature of
13 a State may elect, not fewer than 90 days before the
14 beginning of a fiscal year—

15 “(A) to waive the right of the State to re-
16 ceive amounts apportioned or allocated to the
17 State under the Federal-aid highway program
18 for the fiscal year to which the election relates;
19 and

20 “(B) to receive an amount for that fiscal
21 year that is determined in accordance with sub-
22 section (e) for that fiscal year.

23 “(2) EFFECT.—On making an election under
24 paragraph (1), a State—

1 “(A) assumes all Federal obligations relat-
2 ing to each program that is the subject of the
3 election; and

4 “(B) shall fulfill those obligations using
5 the amounts transferred to the State under
6 subsection (e).

7 “(c) STATE RESPONSIBILITY.—

8 “(1) IN GENERAL.—The Governor of a State
9 making an election under subsection (b) shall—

10 “(A) agree to maintain the Interstate Sys-
11 tem in accordance with the current Interstate
12 System program;

13 “(B) submit a plan to the Secretary de-
14 scribing—

15 “(i) the purposes, projects, and uses
16 to which amounts received under the pro-
17 gram will be put; and

18 “(ii) which programmatic require-
19 ments of this title the State elects to con-
20 tinue;

21 “(C) agree to obligate or expend amounts
22 received under the direct Federal-aid highway
23 program exclusively for projects that would be
24 eligible for funding under section 133(b) if the
25 State was not participating in the program; and

1 “(D) agree to report annually to the Sec-
2 retary on the use of amounts received under the
3 direct Federal-aid highway program and to
4 make the report available to the public in an
5 easily accessible format.

6 “(2) NO FEDERAL LIMITATION ON USE OF
7 FUNDS.—Except as provided in paragraph (1), the
8 expenditure or obligation of funds received by a
9 State under the direct Federal-aid highway program
10 shall not be subject to any Federal regulation under
11 this title (except for this section), title 49, or any
12 other Federal law.

13 “(3) ELECTION IRREVOCABLE.—An election
14 under subsection (b) shall be irrevocable during the
15 applicable fiscal year.

16 “(d) EFFECT ON PREEXISTING COMMITMENTS.—
17 The making of an election under subsection (b) shall not
18 affect any responsibility or commitment of the State under
19 this title for any fiscal year with respect to—

20 “(1) a project or program funded under this
21 title (other than under this section); or

22 “(2) any project or program funded under this
23 title in any fiscal year for which an election under
24 subsection (b) is not in effect.

25 “(e) TRANSFERS.—

1 “(1) IN GENERAL.—The amount to be trans-
2 ferred to a State under the direct Federal-aid high-
3 way program for a fiscal year shall be the portion
4 of the taxes appropriated to the Highway Trust
5 Fund under section 9503 of the Internal Revenue
6 Code of 1986, other than for the Mass Transit Ac-
7 count, for that fiscal year that is attributable to
8 highway users in that State during that fiscal year,
9 reduced by a pro rata share withheld by the Sec-
10 retary to fund contract authority for programs of
11 the National Highway Traffic Safety Administration
12 and the Federal Motor Carrier Safety Administra-
13 tion.

14 “(2) TRANSFERS UNDER PROGRAM.—

15 “(A) IN GENERAL.—Transfers under the
16 program—

17 “(i) shall be made at the same time as
18 deposits to the Highway Trust Fund are
19 made by the Secretary of the Treasury;
20 and

21 “(ii) shall be made on the basis of es-
22 timates by the Secretary, in consultation
23 with the Secretary of the Treasury, based
24 on the most recent data available, and
25 proper adjustments shall be made in

1 amounts subsequently transferred to the
 2 extent prior estimates were in excess of, or
 3 less than, the amounts required to be
 4 transferred.

5 “(B) LIMITATION.—An adjustment under
 6 subparagraph (A)(ii) to any transfer may not
 7 exceed 5 percent of the transferred amount to
 8 which the adjustment relates. If the adjustment
 9 required under subparagraph (A)(ii) exceeds
 10 that percentage, the excess shall be taken into
 11 account in making subsequent adjustments
 12 under subparagraph (A)(ii).

13 “(f) APPLICATION WITH OTHER AUTHORITY.—Any
 14 contract authority under this chapter (and any obligation
 15 limitation) authorized for a State for a fiscal year for
 16 which an election by that State is in effect under sub-
 17 section (b)—

18 “(1) shall be rescinded or canceled; and

19 “(2) shall not be reallocated or distributed to
 20 any other State under the Federal-aid highway pro-
 21 gram.

22 “(g) MAINTENANCE OF EFFORT.—

23 “(1) IN GENERAL.—Not later than 30 days
 24 after the date on which an amount is distributed to
 25 a State or State agency under the State Highway

1 Flexibility Act or an amendment made by that Act,
 2 the Governor of the State shall certify to the Sec-
 3 retary that the State will maintain the effort of the
 4 State with regard to State funding for the types of
 5 projects that are funded by the amounts.

6 “(2) AMOUNTS.—As part of the certification,
 7 the Governor shall submit to the Secretary a state-
 8 ment identifying the amount of funds the State
 9 plans to expend from State sources during the cov-
 10 ered period, for the types of projects that are funded
 11 by the amounts.

12 “(h) TREATMENT OF GENERAL REVENUES.—For
 13 purposes of this section, any general revenue funds appro-
 14 priated to the Highway Trust Fund shall be transferred
 15 to a State under the program in the manner described
 16 in subsection (e)(1).”.

17 (b) CONFORMING AMENDMENT.—The analysis for
 18 title 23, United States Code, is amended by inserting after
 19 the item relating to section 149 the following:

“150. Direct Federal-aid highway program”.

20 **SEC. 3. ALTERNATIVE FUNDING OF PUBLIC TRANSPOR-**
 21 **TATION PROGRAMS.**

22 (a) IN GENERAL.—Chapter 53 of title 49, United
 23 States Code, is amended by adding at the end the fol-
 24 lowing:

1 **“§ 5341. Alternative funding of public transportation**
2 **programs**

3 “(a) DEFINITIONS.—In this section—

4 “(1) ALTERNATIVE FUNDING PROGRAM.—The
5 term ‘alternative funding program’ means the pro-
6 gram established under subsection (c).

7 “(2) COVERED PROGRAMS.—The term ‘covered
8 programs’ means the programs authorized under—

9 “(A) sections 5305, 5307, 5308, 5309,
10 5310, 5311, 5316, 5317, 5320, 5335, 5339,
11 and 5340; and

12 “(B) section 3038 of the Federal Transit
13 Act of 1998 (49 U.S.C. 5310 note).

14 “(b) ELECTION BY STATE NOT TO PARTICIPATE.—

15 “(1) IN GENERAL.—Notwithstanding any other
16 provision of law, a State may elect not to participate
17 in all Federal programs relating to public transpor-
18 tation funded under the Mass Transit Account of
19 the Highway Trust Fund, including the Federal
20 public transportation programs under the
21 SAFETEA–LU (Public Law 109–59; 119 Stat.
22 1144), title 23, or this title.

23 “(2) EFFECT.—On making an election under
24 paragraph (1), a State—

1 “(A) assumes all Federal obligations relat-
2 ing to each program that is the subject of the
3 election; and

4 “(B) shall fulfill those obligations using
5 the amounts transferred to the State under
6 subsection (e).

7 “(c) PUBLIC TRANSPORTATION PROGRAM.—

8 “(1) PROGRAM ESTABLISHED.—Beginning in
9 fiscal year 2011, the Secretary shall carry out an al-
10 ternative funding program under which the legisla-
11 ture of a State may elect, not fewer than 90 days
12 before the beginning of a fiscal year—

13 “(A) to waive the right of the State to re-
14 ceive amounts apportioned or allocated to the
15 State under the covered programs for the fiscal
16 year to which the election relates; and

17 “(B) to receive an amount for that fiscal
18 year that is determined in accordance with sub-
19 section (e).

20 “(2) PROGRAM REQUIREMENTS.—

21 “(A) IN GENERAL.—The Governor of a
22 State that participates in the alternative fund-
23 ing program shall—

24 “(i) submit a plan to the Secretary
25 describing—

1 “(I) the purposes, projects, and
2 uses to which amounts received under
3 the alternative funding program will
4 be put; and

5 “(II) which programmatic re-
6 quirements of this title the State
7 elects to continue;

8 “(ii) agree to obligate or expend
9 amounts received under the alternative
10 funding program exclusively for projects
11 that would be eligible for funding under
12 the covered programs if the State was not
13 participating in the alternative funding
14 program; and

15 “(iii) submit to the Secretary an an-
16 nual report on the use of amounts received
17 under the alternative funding program,
18 and to make the report available to the
19 public in an easily accessible format.

20 “(B) NO FEDERAL LIMITATION ON USE OF
21 FUNDS.—Except as provided in subparagraph
22 (A), the expenditure or obligation of funds re-
23 ceived by a State under the alternative funding
24 program shall not be subject to the provisions

1 of this title (except for this section), title 23, or
2 any other Federal law.

3 “(3) ELECTION IRREVOCABLE.—An election
4 under paragraph (1) shall be irrevocable during the
5 applicable fiscal year.

6 “(d) EFFECT ON PREEXISTING COMMITMENTS.—
7 Participation in the alternative funding program shall not
8 affect any responsibility or commitment of the State under
9 this title for any fiscal year with respect to—

10 “(1) a project or program funded under this
11 title (other than under this section); or

12 “(2) any project or program funded under this
13 title in any fiscal year for which the State elects not
14 to participate in the alternative funding program.

15 “(e) TRANSFERS.—

16 “(1) IN GENERAL.—The amount to be trans-
17 ferred to a State under the alternative funding pro-
18 gram for a fiscal year shall be the portion of the
19 taxes transferred to the Mass Transit Account of the
20 Highway Trust Fund under section 9503(e) of the
21 Internal Revenue Code of 1986, for that fiscal year,
22 that is attributable to highway users in that State
23 during that fiscal year.

24 “(2) TRANSFERS.—

1 “(A) IN GENERAL.—Transfers under the
2 program—

3 “(i) shall be made at the same time as
4 transfers to the Mass Transit Account of
5 the Highway Trust Fund are made by the
6 Secretary of the Treasury; and

7 “(ii) shall be made on the basis of es-
8 timates by the Secretary, in consultation
9 with the Secretary of the Treasury, based
10 on the most recent data available, and
11 proper adjustments shall be made in
12 amounts subsequently transferred, to the
13 extent prior estimates were in excess of, or
14 less than, the amounts required to be
15 transferred.

16 “(B) LIMITATION.—An adjustment under
17 subparagraph (A)(ii) to any transfer may not
18 exceed 5 percent of the transferred amount to
19 which the adjustment relates. If the adjustment
20 required under subparagraph (A)(ii) exceeds
21 that percentage, the excess shall be taken into
22 account in making subsequent adjustments
23 under subparagraph (A)(ii).

24 “(f) CONTRACT AUTHORITY.—There shall be re-
25 scinded or canceled any contract authority under this

1 chapter (and any obligation limitation) authorized for a
2 State for a fiscal year for which the State elects to partici-
3 pate in the alternative funding program.

4 “(g) MAINTENANCE OF EFFORT.—

5 “(1) IN GENERAL.—Not later than 30 days
6 after the date on which an amount is distributed to
7 a State or State agency under the State Highway
8 Flexibility Act or an amendment made by that Act,
9 the Governor of the State shall certify to the Sec-
10 retary that the State will maintain the effort of the
11 State with regard to State funding for the types of
12 projects that are funded by the amounts.

13 “(2) AMOUNTS.—The certification under para-
14 graph (1) shall include a statement identifying the
15 amount of funds the State plans to expend from
16 State sources for projects funded under the alter-
17 native funding program, during the fiscal year for
18 which the State elects to participate in the alter-
19 native funding program.

20 “(h) TREATMENT OF GENERAL REVENUES.—For
21 purposes of this section, any general revenue funds appro-
22 priated to the Highway Trust Fund shall be transferred
23 to a State under the program in the manner described
24 in subsection (e).”.

1 (b) CONFORMING AMENDMENT.—The analysis for
2 title 49, United States Code, is amended by inserting after
3 the item relating to section 5340 the following:

“5341. Alternative funding of public transportation programs”.

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